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RECORDATION NO. 23289-A FILED

DEC 27 '00 2-59 PM

SURFACE TRANSPORTATION BOARD

lgitomer@bjllp.com

December 27, 2000

Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, DC 20423

RECORDS New-A

Dear Secretary Williams:

I have enclosed the original and one certified copy of the document described below, to be recorded pursuant to 49 U.S.C. § 11301.

The document is a Schedule to Lease Agreement, a secondary document, dated as of December 14, 2000. We request that this document be given the "A" suffix of the Recordation Number assigned to the accompanying Lease Agreement.

The names and addresses of the parties to the Schedule to Lease Agreement are:

Lessor:

Banc of America Leasing & Capital, LLC  
555 California Street, 4<sup>th</sup> Floor  
San Francisco, CA 94104

Lessee:

RailTex, Inc.  
5300 Broken Sound Boulevard, NW  
Boca Raton, FL 33487

A description of the equipment covered by the Schedule to Lease Agreement consists of two GP-38 locomotives numbered TPW 3821 and 3878, one GP-40 locomotive numbered TPW 4020, four GP-40-2 locomotives numbered TPW 4052, 4053, 4054, and 4055, and one GP-40-X locomotive numbered TPW 4056.

BALL JANIK LLP

Honorable Vernon A. Williams  
December 27, 2000  
Page 2

A fee of \$26.00 is enclosed. Please return the original to:

Louis E. Gitomer  
Of Counsel  
Ball Janik LLP  
Suite 225  
1455 F Street, N.W.  
Washington, DC 20005

A short summary of the document to appear in the index follows: Schedule to Lease Agreement between Banc of America Leasing & Capital, LLC, 555 California Street, 4<sup>th</sup> Floor, San Francisco, CA 94104, and RailTex, Inc., 5300 Broken Sound Boulevard, NW, Boca Raton, FL 33487, covering two GP-38 locomotives numbered TPW 3821 and 3878, one GP-40 locomotive numbered TPW 4020, four GP-40-2 locomotives numbered TPW 4052, 4053, 4054, and 4055, and one GP-40-X locomotive numbered TPW 4056.

Very Truly Yours,



Louis E. Gitomer

Enclosures

Bank of America



RECORDATION NO.

23289-A

FILED

1999 DEC 29

2:00 PM

SURFACE TRANSPORTATION BOARD

Banc of America Leasing & Capital, LLC

Schedule to  
Lease Agreement

Schedule  
Number 001

This Schedule ("Schedule"), dated as of December 14, 2000 between Banc of America Leasing & Capital, LLC ("Lessor") and RailTex, Inc. ("Lessee") is executed pursuant to Lease Agreement Number 01688-00400 dated December 14, 2000 incorporated in this Schedule by this reference (the "Lease Agreement"). Unless otherwise defined in this Schedule, capitalized terms used in this Schedule have the respective meanings assigned to such terms in the Lease Agreement. If any provision of this Schedule conflicts with any provision of the Lease Agreement, the provisions contained in this Schedule shall prevail. Lessee hereby authorizes Lessor to insert the serial numbers and other identification data of the Units, dates, and other omitted factual matters or descriptions in this Schedule.

**1. Description of Units.** The Units subject to this Schedule ("Units"), which have a cost to Lessor ("Lessor's Cost") in the aggregate of \$\_\_\_\_\_, inclusive of taxes, shipping, installation and other related expenses, if any ("Soft Costs"), are as follows:

See Exhibit A - Description of Units attached hereto and made a part hereof.

**2. Acceptance.** Lessee acknowledges and represents that the Units (a) have been delivered to, received and inspected by Lessee, (b) are in good operating order, repair, condition and appearance, (c) are of the manufacture, design and capacity selected by Lessee and are suitable for the purposes for which the Units are leased, and are acceptable and satisfactory to Lessee, (d) do not require any additions or modifications to make them suitable for use, other than ancillary modifications or additions normally made by lessees of similar assets, and are available for use and lease by Lessee and Lessor, and (e) have been irrevocably accepted as "Units" leased by Lessee under this Schedule as of the date written below (the "Acceptance Date").

**3. Term.** The term of the Lease for the Units described herein is for an Interim Term commencing on the "Acceptance Date" set forth below, and continuing through and including the day preceding the Base Date; and for a Base Term of Eighty Four (84) months commencing on December 29, 2000 (the "Base Date").

**4. Rental.** Interim Rent shall be due Lessor for each day in the Interim Term and shall equal the daily equivalent of the initial Base Rent. Interim Rent shall be payable on the Base Date.

Base Rent shall be payable in Fourteen (14) consecutive quarterly installments of \$\_\_\_\_\_ each, followed by Fourteen (14) consecutive quarterly installments of \$\_\_\_\_\_ each, or as set forth in the Schedule of Base Rent installments attached hereto, the first Base Rent installment being payable ninety (90) days following the Base Date and the remaining Base Rent installments being payable on the 29th day of each succeeding quarter.

**5. Stipulated Loss Value.** After Lessors receipt of notice of the occurrence of any Total Loss or other relevant event relating to any Unit, Lessor shall calculate the Stipulated Loss Value for such Unit and give Lessee notice thereof. Such "Stipulated Loss Value", as of any particular date, shall be the product obtained by multiplying the Lessors Cost for the Unit in question by the percentage, as set forth in the "Schedule of Stipulated Loss Values" attached as Annex 1, specified opposite the rent installment number (or date) becoming due immediately after the date Lessee gives or is required to give Lessor notice requiring payment of the Stipulated Loss Value. If only a portion of the Units is affected by any event causing calculation of Stipulated Loss Value, and the cost of such portion cannot be readily determined from the Lessors Cost set forth above, then the Lessors Cost for such portion shall be as reasonably calculated by Lessor, and notified to Lessee.

**6. Tax Matters.** Lessee represents, warrants and agrees that (a) the Units qualify under asset guideline class 0.25 and constitute "7-year property" within the meaning of Section 168 of the Code; (b) the Lessor is the owner of the Units and is entitled to annual accelerated cost recovery deductions for each Unit as provided by Section 168(a) of the Code; (c) the Lessee and all direct or indirect assignees and sublessees of Lessee shall treat this Lease as a "true lease" for income tax purposes and will not claim any depreciation or other tax attributes associated with ownership of the Units; and (d) in any taxable year of Lessor, no deductions or losses arising from this Lease will arise from sources without the United States under Section 863 of the Code.

7. **Location of Units.** Units will be located at:

<u>Location</u>	<u>Address</u>	<u>City</u>	<u>County</u>	<u>State</u>	<u>ZIP</u>
A	1990 East Washington Street	East Peoria	Tazewell	Illinois	61611

8. **Further Representations and Agreements.** Lessee represents, warrants and agrees as follows:

(a) All representations and warranties of Lessee contained in the Lease Agreement are restated as of the Acceptance Date and are true and correct as of such date.

(b) There has been no material adverse change in the operations, business, properties or condition (financial or otherwise) ("Material Adverse Change") of Lessee or any Guarantor since December 31, 1999. There is not pending against Lessee any litigation, proceeding, dispute or claim that may result in a Material Adverse Change as to Lessee or that may call into question or impair Lessee's legal or other ability to enter into and perform its obligations under this Lease.

(c) The operation and maintenance of any Unit in the ordinary course by Lessee do not require the entry into any software or other intellectual property rights agreement with any licensor or other person, except as disclosed to Lessor in writing prior to the Acceptance Date.

9. **Miscellaneous.**

(a) Limited Right to Sublease. Notwithstanding Section 12(b) of the Lease Agreement, while no Event of Default exists, Lessee may sublease the Units subject to this Schedule on a fully subordinated basis if (i) each sublease and sublessee are acceptable to Lessor; (ii) each sublessee is a wholly-owned subsidiary of RailAmerica, Inc.; (iii) each sublessee executes and delivers to Lessor an acknowledgment in form and substance satisfactory to Lessor; and (iv) Lessee assigns the sublease to Lessor pursuant to security documentation in form and substance satisfactory to Lessor. Lessee shall not modify or amend, or waive any material rights under, any sublease approved by Lessor, nor shall Lessee sell, assign or transfer, or create or suffer to be incurred any lien, claim or security interest on any sublease, except with the prior consent of Lessor.

(b) Extension; Purchase. In lieu of Lessee's obligation to return the Units to Lessor upon expiry of the Base Term, Lessee may, if no Event of Default exists, and upon Lessee having provided to Lessor notice not less than 180 days prior to such expiry, irrevocably elect to:

- (i) extend the Base Term as to all and not less than all of the Units under this Schedule for a period of twelve (12) months for an amount equal to the Units' then fair market rental value as determined by Lessor. The fair market rental value shall be payable monthly by Lessee to Lessor on the first day of each month during the extension term, or
- (ii) purchase all of Lessor's right, title and interest in and to all, but not less than all, of the Units under this Schedule on an "as-is, where-is," quitclaim basis, for a purchase price equal to \$                      1. Lessee shall pay Lessor the purchase price plus any applicable taxes on the expiration of the Base Term in immediately available funds.

If Lessee fails to provide notice of its election to either renew or purchase pursuant to clause (i) or (ii) above, respectively, at least 180 days before expiration of the Base Term, this Schedule and the Base Term shall, at the option of Lessor, renew for a period of three months at the same rental as was most recently payable during the Base Term or terminate upon expiration of the Base Term. Lessee shall reimburse Lessor for all costs and expenses (including Attorney Costs) incurred in connection with any extension or purchase hereunder.

10. **Rail Equipment Provisions.** In addition to the other requirements in the Lease Agreement, Lessee agrees, in relation to any Unit that is a locomotive or rail car, at all times during the term of the Lease, at its own expense, as follows:

- (a) Use, Maintenance; Return Conditions. Lessee (i) shall not cause or permit the Unit to be used or assigned for use in service involving the regular operation outside the United States; and (ii) shall use, operate, protect and maintain the Units in compliance with all standards of the Association of Railroads and any successor organization. Supplementing the provisions of Section 8 of the Lease Agreement, at such time as Lessor is entitled to possession of any Unit, Lessee shall comply with the additional return conditions specified in Annex II.

(b) STB Filing. Lessee shall, at its expense, cause a copy of this Schedule, or summary thereof, as instructed by Lessor, to be filed with the Surface Transportation Board.

Banc of America Leasing & Capital, LLC

By: [Signature]  
Printed Name: LAUREN S. CASEY  
Title: VICE PRESIDENT  
08N3172

RailTex, Inc.

By: [Signature]  
Printed Name: Julie Herbert  
Title: VP  
Acceptance Date: 12/21/00

Attachments:

Annex I: Schedule of Stipulated Loss Values  
Annex II: Supplemental Return Requirements

Notarial Acknowledgment:

State of Georgia  
County of Dekalb ss.:

I hereby certify that on this 22nd day of December, 2000 before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Lauren S. Casey to me known to be the person described in and who executed the foregoing instrument and acknowledged before me that he duly executed same.

In Witness Whereof, I have hereunto set my hand and official seal as of the date hereof.

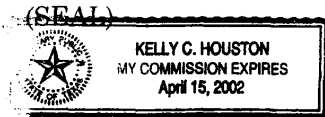
My Commission Expires \_\_\_\_\_, 20\_\_\_\_.

Notary Public, Dekalb County, Georgia  
(Official Seal) My Commission Expires February 17, 2003

  
\_\_\_\_\_  
Notary Public  
In and for said County and State

STATE OF Texas )  
COUNTY OF Bexar )

On this 22 day of December, 2000, personally appeared before me  
Julie Herbert who being duly sworn by me says that he/she is  
Vice President of KAITEX, INC. and that he/she signed,  
executed and delivered the foregoing instrument on the day and year therein  
mentioned.



NOTARY PUBLIC

Kelly C. Houston  
Signature

Kelly C. Houston  
Printed Name  
State of Texas

My commission Expires 4-15-02

**Exhibit A to Equipment Lease  
Schedule Number 01688-00400-001**


**Lessee:** RailTex, Inc.

**Lessor:** Banc of America Leasing & Capital, LLC

<u>Quantity</u>	<u>Description</u>	<u>SerialNum</u>	<u>Lessor's Cost</u> <u>(Including Soft Costs)</u>
<b>A</b>	<b>1990 East Washington Street East Peoria, Illinois 61611</b>		
1	Used Locomotive, Model Number GP38	TPW 3821	
1	Used Locomotive, Model Number GP38	TPW 3878	
1	Used Locomotive, Model Number GP40	TPW 4020	
1	Used Locomotive, Model Number GP40-2	TPW 4054	
1	Used Locomotive, Model Number GP40-2	TPW 4053	
1	Used Locomotive, Model Number GP40-2	TPW 4055	
1	Used Locomotive, Model Number GP40-2	TPW 4052	
1	Used Locomotive, Model Number GP40-X	TPW 4056	

Equipment Total:	\$:
Payment Total - Quarter 1 through Quarter 14:	
- Quarter 15 through Quarter 28:	
Grand Total:	\$:

Banc of America Leasing & Capital, LLC

By: 

Printed Name: Lauren S. Casey

Title: Vice President

RailTex, Inc.

By: 

Printed Name: Julie Herbert

Title: VP



Notarial Acknowledgment:

State of Georgia  
County of Dekalb ss.:

I hereby certify that on this 22nd day of December, 2000 before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Lauren S. Casey to me known to be the person described in and who executed the foregoing instrument and acknowledged before me that he duly executed same.

In Witness Whereof, I have hereunto set my hand and official seal as of the date hereof.

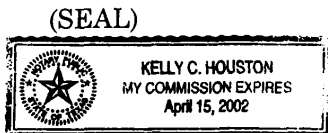
My Commission Expires \_\_\_\_\_, 20\_\_\_\_.

Notary Public, Dekalb County, Georgia  
(Official Seal) My Commission Expires February 17, 2003

  
\_\_\_\_\_  
Notary Public  
In and for said County and State

STATE OF Texas )  
COUNTY OF Bexar )

On this 22 day of December, 2000, personally appeared before me  
Julie Herbert who, being duly sworn by me says that he/she is  
Vice President of RailTex, Inc and that he/she signed,  
executed and delivered the foregoing instrument on the day and year therein  
mentioned.



NOTARY PUBLIC

Kelly C. Houston  
Signature

Kelly C. Houston  
Printed Name  
State of Texas

My commission Expires 4-15-02

ANNEX I  
TO  
SCHEDULE  
01688-00400

SCHEDULE OF  
STIPULATED LOSS VALUES

<u>Base Rent Installment Number</u>	<u>Stipulated Loss Value Percentage</u>
0	
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

### **Locomotive Maintenance and Return Provisions**

Lessee will at all times, at its sole expense, maintain the Equipment in accordance with all AAR and FRA requirements, in good operating condition and appearance at all times with an active "Blue Card". The Equipment will be in such condition as to be able to be placed into immediate revenue service and in compliance with all interchange requirements. The engines will be maintained and overhauled at the manufacturer's recommended intervals as specified in OEM maintenance practices manuals and all parts replaced will be with parts approved by the OEM.

#### **Return**

Lessee must notify Lessor in writing not less than 180 days of its intent to return the Equipment. The equipment being returned must be in good operating condition and appearance and have been maintained in accordance with all AAR and FRA standards in a non-discriminatory manner as compared to other Equipment operated by Lessee. The equipment will have an active "Blue Card" and be suitable to be placed into immediate service on another Rail Line.

Lessee will provide free movement to an interchange point selected by Lessor at lease expiration or storage period.

Lessee will provide full service maintenance records for each Unit of Equipment along with all descriptive material for the Units as originally provided at lease commencement. The Units will not be more than half time between major overhaul periods as suggested by the OEM.

Lessee will provide up to 90 days free storage with the Equipment properly protected and insured after the expiration of the lease term if requested by Lessor.

The Equipment will be subject to an end of lease inspection by a qualified inspector selected by Lessor. If any Unit is found to be not in the condition called for by the lease agreement, the rent payments will continue at their existing rates until the Unit is returned in compliance with those terms.

**Bank of America**



**Banc of America Leasing & Capital, LLC**

**Personal Property Taxes**

Lease Agreement

Lease No.01688-00400

Schedule No.001

Tax laws require Banc of America Leasing & Capital, LLC, as legal owner of your leased equipment, to be responsible for listing the equipment under this lease contract, and any supplements thereto, for any Federal, State, County, or Municipal taxes applicable to this leased property, and for timely payment of taxes assessed thereon.

Your lease agreement defines your responsibility for reimbursement of these taxes to Banc of America Leasing & Capital, LLC promptly as Lessee.

Please acknowledge your understanding and acceptance of these conditions by signing and dating below:

I (We) will declare when listing property to taxing authorities, the equipment covered by this and any subsequent leases as LEASED equipment only.

I (We) will immediately notify Banc of America Leasing & Capital, LLC of any change in location of this equipment.

I (We) will reimburse Banc of America Leasing & Capital, LLC promptly upon receipt of invoices for any taxes paid by Banc of America Leasing & Capital, LLC assessed on equipment we are leasing therefrom.

Equipment Location:

<u>Location</u>	<u>Address</u>	<u>City</u>	<u>County</u>	<u>State</u>	<u>ZIP</u>
A	1990 East Washington Street	East Peoria	Tazewell	Illinois	61611

RailTex, Inc.

BY

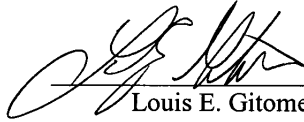
TITLE

DATE

95-14-051 (5-93)

CERTIFICATION

I, Louis E. Gitomer, have compared this copy to the original Schedule to Lease Agreement dated as of December 14, 2000 and found the copy to be complete and identical in all respects to the original document. I declare under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
Louis E. Gitomer  
December 27, 2000